



DEPARTMENT OF THE NAVY

BOARD FOR CORRECTION OF NAVAL RECORDS

2 NAVY ANNEX

WASHINGTON DC 20370-5100

BJG

Docket No: 2806-00

18 May 2000

1STLT [REDACTED] USMCR
[REDACTED]
[REDACTED]

Dear Lieutenant [REDACTED]:

This is in reference to your application for correction of your naval record pursuant to the provisions of title 10 of the United States Code, section 1552.

A three-member panel of the Board for Correction of Naval Records, sitting in executive session, considered your application on 18 May 2000. Your allegations of error and injustice were reviewed in accordance with administrative regulations and procedures applicable to the proceedings of this Board. Documentary material considered by the Board consisted of your application, together with all material submitted in support thereof, your naval record and applicable statutes, regulations and policies. In addition, the Board considered the report of the Headquarters Marine Corps Performance Evaluation Review Board (PERB), dated 18 April 2000, a copy of which is attached.

After careful and conscientious consideration of the entire record, the Board found that the evidence submitted was insufficient to establish the existence of probable material error or injustice. In this connection, the Board substantially concurred with the comments contained in the report of the PERB. Since the contested adverse fitness report documents your relief for cause for a "pattern of poor judgment," they found it was permissible for the reporting senior to cite matters forming a part of that pattern which occurred before the reporting period. They found that the reviewing officer added no new adverse information requiring further referral to you for comment. In view of the above, your application has been denied. The names and votes of the members of the panel will be furnished upon request.

It is regretted that the circumstances of your case are such that favorable action cannot be taken. You are entitled to have the Board reconsider its decision upon submission of new and material evidence or other matter not previously considered by the Board. In this regard, it is important to keep in mind that a presumption of regularity attaches to all official

records. Consequently, when applying for a correction of an official naval record, the burden is on the applicant to demonstrate the existence of probable material error or injustice.

Sincerely,

W. DEAN PFEIFFER
Executive Director

Enclosure



DEPARTMENT OF THE NAVY
HEADQUARTERS UNITED STATES MARINE CORPS
3280 RUSSELL ROAD
QUANTICO, VIRGINIA 22134-5103

2806-00

IN REPLY REFER TO:
1610
MMER/PERB
18 APR 2000

MEMORANDUM FOR THE EXECUTIVE DIRECTOR, BOARD FOR CORRECTION OF
NAVAL RECORDS

Subj: MARINE CORPS PERFORMANCE EVALUATION REVIEW BOARD (PERB)
ADVISORY OPINION ON BCNR APPLICATION IN THE CASE OF FIRST
LIEUTENANT [REDACTED] USMCR

Ref: (a) 1stLt. [REDACTED] Form 149 of 15 Jan 00
(b) MCO P1610.7E

1. Per MCO 1610.11C, the Performance Evaluation Review Board, with three members present, met on 12 April 2000 to consider First Lieutenant [REDACTED] petition contained in reference (a). Removal of the fitness report for the period 981206 to 990315 (DC) was requested. Reference (b) is the performance evaluation directive governing submission of the report.

2. The petitioner contends that the report refers to an incident that did not occur during the reporting period. He also points out that he was not present for the investigation mentioned in the report, and that the absence of his input resulted in inaccurate findings of fact. Finally, the petitioner contends that during the reporting period he was never counseled, either formally or informally.

3. In its proceedings, the PERB concluded that the report is both administratively correct and procedurally complete as written and filed. The following is offered as relevant:

a. Other than his own statement and a copy of the challenged fitness report, the petitioner has furnished absolutely nothing that would cause the Board to question either the accuracy or fairness of the challenged fitness report. Even if documented that the "incident" had not occurred during the stated reporting period, it is very possible the investigation itself may not have been concluded during that same reporting period. Consequently, the reporting officials were correct in delaying any mention of the situation.

b. The Board finds nothing to show that the petitioner was not the recipient of counseling or some type of performance feedback during the reporting period. Especially concerning the serious nature of the occurrences during the reporting period, and given the relationship between the petitioner and his

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Reporting Senior, the Board is hard-pressed to believe there was an absence of "counseling."

c. What is extremely relevant in this situation is that when the petitioner had an opportunity to surface these issues via a statement of rebuttal, he clearly chose to not avail himself of that right (evidence the marking/signature in Item 24 of the fitness report). As contained in his comments, the Reviewing Officer gave the petitioner a second opportunity to submit a rebuttal. Again, he declined that offer. In this regard, the Board invites attention to the guidance contained in subparagraph 5008.3 of reference (b), the applicable portion of which is quoted verbatim: "The appeal process is not a substitution for an attempt at proper resolution of an adverse report during its preparation and review."

d. It is the position of the PERB that to justify the deletion (or amendment) of a fitness report, evidence of probable error or injustice should be submitted. Such is simply not the situation in this case.

4. The Board's opinion, based on deliberation and secret ballot vote, is that the contested fitness report should remain a part of First Lieutenant [REDACTED] official military record.

5. The case is forwarded for final action.

[REDACTED]
Colonel, U.S. Marine Corps
Deputy Director
Personnel Management Division
Manpower and Reserve Affairs
Department
By direction of the Commandant
of the Marine Corps